

The First Interim Report by the Toxicology Advisory Board

(July 22, 2011)

1. Overview of the Indiana State Department of Toxicology.

Senate Bill Enrolled Act 431-2011 removed the Department from the Indiana University School of Medicine (IUSM) and made it an independent state agency effective July 1, 2011. Governor Daniels appointed the Toxicology Advisory Board (Board) members on June 16, 2011. The three members are Dr. James Klaunig, Mr. Mike Medler and Linda L. Chezem.

After appointment, the Board held several public meetings to review the current state of the agency in a fact finding exercise.

These meetings included:

2. The Board held an organizational meeting on June 24, 2011.

Linda Chezem was selected as chairperson.

The Board, after reviewing the statute, accepted as its charge the following language:

The toxicology advisory Board is established to assist in the transition of the state department of toxicology from the Indiana University School of Medicine to the state department of toxicology under IC 10-20. The Board shall provide guidance on: (1) the transition to the department; (2) obtaining accreditation by a nationally recognized organization that sets toxicology standards; and (3) recommendations for additional legislation needed regarding the ongoing operations of the department of toxicology. (f) The Board shall deliver a report to the governor and the legislative council by September 1, 2012. The report to the legislative council must be in an electronic format under IC 5-14-6.

In addition to providing guidance on operational and organizational matters, the advisory Board's scope of work will include but not be limited to:

- *Establish the qualifications and search for a permanent director;*
- *Promulgation of rules and deployment of breath test instruments as well as development of a program for the certification of public safety officials for the operation of the equipment;*
- *Laboratory accreditation under ISO 17025 as applicable to forensic laboratories and*
- *Gain an understanding of the progress and results of the ongoing technical review of cases*

The Board reviewed the proposed Memorandum of Understanding (MOU) between the State and IUSM for transition of the laboratory operation. With a few suggestions, the Board recommended that the MOU be put in place as soon as possible. As a part of the MOU, the points of contact for the Board and for IUSM for the exchange of information were established. The Board reviewed the documents available to it regarding the technical paperwork review of the data from laboratory testing from 2007 to 2008 by outside consultants.

Though many have referred to this review as an audit, it is only a review of paperwork, not actual sample retesting. Instead, a “technical review of cases and the associated test results” is the language in the “agreement for consulting services” with the ISDT.

3. The Board held its second meeting on June 29, 2011.

The Board met at the Department of Toxicology offices and laboratories and met with the management team from the University as well as some staff members from the ISDT, at their request to acquire more information and context.

The Board noted the need for more precise and complete information and documentation to sort through the management, organizational structure, and senior leadership at the Department.

4. A third meeting of the Board was held on July 6, 2011 at the ICJI offices in Indianapolis.

The Board discussed cost and process of the paperwork review of the laboratory testing documentation for the 2007-2008 periods. At this time, the amount paid and or due to the consultants is over \$250,000 and the cost to copy the documents for the consultants to review the data is over \$40,000. These costs do not include the cost of any retesting of samples identified as problematic by the technical review of cases.

5. A fourth meeting of the Board was held on July 15, 2011 at the ICJI offices in Indianapolis.

A discussion, by teleconference, with National Forensic Science Technology Center (NFSTC) occurred. The NFSTC is an organization that assists at a national level in helping forensic laboratories to attain accreditation as well as establishing the correct structure and leadership needed to meet ISO 17025 as applicable to forensic laboratories. The Board also discussed the issues that are facing the alcohol and impaired driving program and the immediate need for strong and capable leadership in the ISDT. In addition, other discussion of the results of the interviews, the review of requested documentation from the ISDT and need of further information occurred. The Board is also reviewing legislative needs related to the ISDT.

Preliminary Findings and Recommendations

Based on the initial meetings and review of requested information noted above, the Board has the following findings and recommendations.

1. The Board recommends that the Governor's Office officially appoint an interim director of toxicology for a term to last no longer than 6 months. There is a need for strong and competent leadership in the ISDT. An interim director should be appointed by the governor as soon as possible.
2. The Board recommends the Governor's Office to place a hold on the current contract and work completed by outside consultants until retesting of identified problematic cases is conducted.
 - a. The technical review of cases (which was a "paper" review of analysis, data, notes, etc. but did not include any retesting of the samples in question) initiated by the former director has revealed a number of structural concerns in the performance of analysis on several positive tests for THC and cocaine. After the technical review of cases ; the Board concluded that to properly and thoroughly examine the issues raised by this technical review of cases that further testing of the samples be performed by an outside, third party, laboratory. Until the re-analysis of the samples raised as questionable in the technical review of cases can be completed, it is scientifically unclear if the result reported is incorrect.
 - b. The Board recommends that an ISO 17025 accredited forensic laboratory perform these tests.
 - c. The results of the retesting shall be reviewed by consulting toxicologists and the Board and should be conveyed to the prosecutors, defense and public in understandable language. In other words, the explanations made should explain the significance of the findings and what they mean in lay language.
3. The Board recommends that the State develop plans for transition of the ISDT to include but not limited to the following:
 - a. The transition of personnel from the University to the State;
 - b. The transition of information technology (IT) systems from the University to the State;
 - c. The transition of the budgetary and finance aspects of the ISDT from the University to the State;
 - d. That the State develop security protocols for the ISDT and strictly review the ones currently in place to protect the sensitive and investigatory records of the ISDT;
 - e. That an full asset inventory be undertaken by the State; and
 - f. That procurement protocols are transitioned from the University to the State.

4. The Breath testing program is in need of immediate attention. The Board asked for information on the location, number and condition of the new instruments that were purchased by the lab previously that have not been placed in designated field locations.

The Board made the following recommendations for the breath testing program:

- a. Confirm that the evaluation process for the new instrument selection and purchase was evaluated per the requirements of the Indiana code and regulations.
- b. Confirm the reliability of the new instruments and their capacity to perform to the Indiana requirements.
- c. As soon as the breath test instrument selection has been confirmed, promulgate the rules and develop a training and placement plan.
- d. In addition, there appears to be no senior leadership of the breath test program. Leadership of the breath test program needs to be assigned immediately.
- e. The training process – certification and recertification of officers needs to be evaluated as to the current process ensuring that the process is following proper scientific and administrative code requirements for the state of Indiana.
- f. Develop a plan to maintain and certify the existing instruments.

5. A needs assessment of the ISDT is required.

The Board recommends that the State enter into an agreement with National Forensic Science Technology Center (NFSTC) The National Forensic Science Technology Center (NFSTC) is a 501(c) (3) not-for-profit corporation headquartered in Largo, Florida. Founded in 1995, the NFSTC provides quality forensic services including training, assessment, research and technology assistance to the justice and forensic communities. NFSTC receives funding from the National Institute of Justice and other federal agencies.

The assessment will advise the Board and the State with the development of a list of “task orders” to be selected, prioritized and completed by NFSTC to help move the ISDT forward.

6. Current legal representation and advice to the ISDT.

In the fact finding process, it became apparent to the Board that there is confusion on the legal representation of the ISDT. The Board recommends that the legal representation of the ISDT be resolved immediately by the State.